

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Examine the  
Commission's Future Energy Efficiency Policies,  
Administration and Programs.

Rulemaking 01-08-028  
(Filed August 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING NOTICE OF INTENT TO CLAIM COMPENSATION**

**1. Summary**

This ruling responds to the notice of intent (NOI) to claim compensation filed in this docket by Latino Issues Forum (LIF), and pursuant to Public Utilities Code, Article 5, Section 1804. After consultation with the Assigned Commissioner, this ruling denies LIF's request for a finding of eligibility for intervenor compensation for work conducted prior to its filing of its NOI because its pleading is inexplicably late. This ruling does not prejudge whether LIF would be found eligible should the scope of the proceeding change as a result of the prehearing conference held on January 23, 2004. LIF should file a new timely NOI following the prehearing conference if it decides to participate in upcoming phases of the proceeding.

**2. Statutory Requirements Relevant to LIF's NOI**

Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." It also

permits the Commission to accept a late filing where a party could not have reasonably identified issues within 30 days of the prehearing conference.

Section 1804(a)(2) sets forth those items that must be addressed in an NOI. Pursuant to Decision (D.) 98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b), and identify whether the intervenor is a participant representing consumers, or a representative authorized by a customer, or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers. If the customer category identified is “a representative authorized by a customer,” the NOI should identify “the residential customer or customers that authorized him to represent that customer.” That identification is needed because this category of customer “connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding.” (D.98-04-059, pp. 28-30.) Participation in Commission proceedings by parties representing the full range of affected interests is important. Such participation assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation.

Once the applicable definition of customer is identified, the correct standard of “significant financial hardship” can be applied. Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for award of compensation. Section 1802(g) defines “significant financial hardship.”

“Significant financial hardship” means either that the customer cannot without undue hardship afford to pay the costs of effective participation,

including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

### **3. LIF's NOI**

LIF filed its NOI on December 5, 2003, more than two years after the last prehearing conference held in this proceeding on September 10, 2001. It is therefore filed long after the statutory deadline. Section 1804(1)(a) permits the Commission to accept NOIs late in cases where "the schedule would not reasonably allow parties to identify issues" within 30 days after the prehearing conference or "where new issues emerge subsequent to the time set for filing."

Since the prehearing conference held in September 2001, the proceeding and the Commission's policies have evolved. The Assigned Commissioner announced her intent to review various policy and program issues in a ruling dated July 3, 2003. Although the ruling did not change the scope of this proceeding, it might nevertheless mitigate in favor of accepting LIF's NOI late. In this case, however, LIF presents no reason for its delay in filing an NOI more than five months after the issuance of the Assigned Commissioner's ruling. LIF has been on the service list of this proceeding since its inception and has therefore had ample opportunity to follow its progress. In addition, LIF has previously filed three pleadings in this proceeding, one of which was filed on December 23, 2002, almost a year before LIF filed its NOI.

The Commission makes exceptions to its rules where they are justified. Indeed, in this proceeding, it accepted the NOI of Greenaction for Health and the

Environment (Greenaction), which was filed in September 2003.<sup>1</sup> Greenaction did not become aware of this proceeding until shortly before it filed its NOI. Unlike Greenaction, LIF has been aware of the issues that affect its constituencies from the proceeding's initiation and is a seasoned participant in Commission proceedings.

The Commission has many times expressed its interest in encouraging participation by the members of the public. The prospect of receiving intervenor compensation for contributions to Commission proceedings encourages participation. The statutes governing the Commission's intervenor compensation program permit some procedural discretion on the Commission's part and the Commission has normally given the benefit of the doubt to parties with regard to procedural rules when no other party is prejudiced.

On the other hand, granting LIF's request for a finding of eligibility for intervenor funding in this case would require the Commission to completely ignore the rules and the statutes governing intervenor compensation. In so doing, the Commission would either have to extend the same exception to all future parties filing NOIs or provide an unjustified preference to one party. Neither of these outcomes is acceptable. Therefore, we must find that LIF is not eligible to claim intervenor compensation for its efforts prior to the filing of its NOI.

The Commission held a prehearing conference on January 23, 2004, which may result in new issues becoming part of the scope of the proceeding. If LIF decides to participate in the proceeding going forward, it should file a new NOI

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<sup>1</sup> The Administrative Law Judge issued a ruling on October 9, 2003, in this proceeding finding that Greenaction had met the requirements of § 1802.

within 30 days of the prehearing conference identifying the nature and extent of its planned participation and an estimate of compensation it expects to request. LIF need not include the information on its customer status or significant financial hardship as the NOI filed on December 5, 2003, is otherwise consistent with the requirements of § 1802.

**IT IS RULED** that Latino Issues Forum's request for a finding that it is eligible to seek compensation in this proceeding is denied for work conducted prior to filing its December 5, 2003 Notice of Intent for all of the foregoing reasons.

Dated January 27, 2004, at San Francisco, California.

/s/ KIM MALCOLM  
Kim Malcolm  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notice of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated January 27, 2004, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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